

**ORDINANCE NO. 49-390**

**AN ORDINANCE AUTHORIZING THE CITY OF WICHITA, KANSAS, TO ISSUE ITS INDUSTRIAL REFUNDING AND IMPROVEMENT REVENUE BONDS, SERIES V, 2012 (J.R. CUSTOM METAL PRODUCTS, INC. PROJECT), IN THE AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$4,400,000 FOR THE PURPOSES OF PAYING THE COST OF CONSTRUCTING AN EXPANSION TO AND EQUIPPING AN EXISTING MANUFACTURING FACILITY AND REFUNDING THE CITY'S OUTSTANDING INDUSTRIAL REVENUE BONDS, SERIES XVIII, 1998 (J.R. CUSTOM METAL PRODUCTS, INC. PROJECT); AND AUTHORIZING THE EXECUTION OF CERTAIN DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BONDS.**

**WHEREAS**, the City of Wichita, Kansas (the "Issuer"), is authorized by K.S.A. 12-1740 *et seq.*, as amended (the "Act"), to acquire, construct, improve and equip certain facilities (as defined in the Act) for commercial, industrial and manufacturing purposes, to enter into leases and lease-purchase agreements with any person, firm or corporation for such facilities, and to issue revenue bonds for the purpose of paying the costs of such facilities; and

**WHEREAS**, pursuant to the Act and Ordinance No. 44-112 of the Issuer, the Issuer has heretofore issued its Industrial Revenue Bonds, Series XVIII, 1998 (J.R. Custom Metal Products, Inc. Project) (the "Series 1998 Bonds"), in the original principal amount of \$3,500,000; and

**WHEREAS**, the Series 1998 Bonds were issued for the purpose of paying the costs of acquiring, constructing and equipping a certain manufacturing facility (the "Original Project") located in the City of Wichita, Kansas; and

**WHEREAS**, the Issuer has found and does find and determine that it is desirable in order to promote, stimulate and develop the general economic welfare and prosperity of the Issuer and the State of Kansas that the Issuer issue its Industrial Refunding and Improvement Revenue Bonds, Series V, 2012 (the "Bonds"), in the aggregate principal amount not to exceed \$4,400,000 for the purposes of paying the costs of constructing an expansion to and equipping the Original Project (the "2012 Project"), as more fully described in the hereinafter defined Indenture and Lease and refunding the Issuer's outstanding Series 1998 Bonds; and

**WHEREAS**, the Original Project and the 2012 Project are herein collectively referred to as the "Project"; and

**WHEREAS**, the Issuer will lease the Project to Hijos, LLC, a Kansas limited liability company (the "Tenant"), pursuant to the terms of the Lease herein authorized; and

**WHEREAS**, the Tenant will sublease the Project to J.R. Custom Metal Products, Inc., a Kansas Corporation (the "Subtenant"); and

**WHEREAS**, the Bonds and the interest thereon shall not be a general obligation of the Issuer, shall not be payable in any manner by taxation and shall be payable solely from the trust estate established under the Indenture, including revenues from the Lease of the Project; and

**WHEREAS**, the Issuer further finds and determines that it is necessary and desirable in connection with the issuance of the Bonds to execute and deliver (i) a Trust Indenture dated as of December 1, 2012 (the “Indenture”), with UMB Bank, n.a., Wichita, Kansas, as trustee (the “Trustee”), prescribing the terms and conditions of issuing and securing the Bonds; (ii) a Lease dated as of December 1, 2012 (the “Lease”), with the Tenant in consideration of payments of Basic Rent and other payments provided for therein; (iii) a Bond Placement Agreement providing for the sale of the Bonds by the Issuer to UMB Bank, n.a.; and (iv) an Administrative Service Fee Agreement dated as of December 1, 2012 by and between the Issuer and the Tenant (collectively, the “Bond Documents”);

**NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, AS FOLLOWS:**

**Section 1. Definition of Terms.** All terms and phrases not otherwise defined herein shall have the respective meanings set forth in the Indenture and the Lease herein authorized and defined.

**Section 2. Authority to Refund the Series 1998 Bonds.** The Governing Body of the Issuer hereby authorizes the current refunding of the Series 1998 Bonds in accordance with the provisions of the Indenture, all as provided herein and in the Trust Indenture dated as of December 1, 1998, by and between the Issuer and Emprise Bank, as trustee (the “1998 Trustee”), and hereby further authorizes any necessary instructions to the 1998 Trustee concerning the issuance of a call notice for the Series 1998 Bonds.

**Section 3. Authority to Cause the 2012 Project to be Constructed and Equipped.** The Governing Body of the Issuer hereby declares that the 2012 Project, if in being, would promote the welfare of the City of Wichita, Kansas, and the Issuer is hereby authorized to cause the 2012 Project to be constructed and equipped all in the manner and as more particularly described in the Indenture and the Lease hereinafter authorized.

**Section 4. Authorization of and Security for the Bonds.** The Issuer is hereby authorized and directed to issue the Bonds, to be designated “City of Wichita, Kansas, Industrial Refunding and Improvement Revenue Bonds, Series V, 2012 (J.R. Custom Metal Products, Inc. Project),” in the aggregate principal amount not to exceed \$4,400,000. The Bonds shall be dated and bear interest, shall mature and be payable at such times, shall be in such forms, shall be subject to redemption and payment prior to the maturity thereof, and shall be issued in the manner prescribed and subject to the provisions, covenants and agreements set forth in the Indenture. The Bonds shall be special limited obligations of the Issuer payable solely from the trust estate established under the Indenture, including revenues from the Lease of the Project. The Bonds shall not be general obligations of the Issuer, nor constitute a pledge of the full faith and credit of the Issuer and shall not be payable in any manner by taxation.

**Section 5. Lease of the Project.** The Issuer shall cause the Project to be leased to the Tenant pursuant to and in accordance with the provisions of the Lease in the form approved herein.

**Section 6. Execution of Bonds and Bond Documents.** The Mayor of the Issuer is hereby authorized and directed to execute the Bonds and deliver them to the Trustee for authentication on behalf of, and as the act and deed of the Issuer in the manner provided in the Indenture. The Mayor is further authorized and directed to execute and deliver the Bond Documents on behalf of, and as the act and deed of the Issuer in substantially the forms presented for review prior to final passage of this Ordinance, with such minor corrections or amendments thereto as the Mayor may approve, which approval shall be evidenced by his execution thereof, and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the purposes and intent of this Ordinance and the Bond Documents. The City Clerk or any Deputy City Clerk of the Issuer is hereby authorized and directed to attest the execution of the Bonds, the Bond Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out the intent of this Ordinance under the Issuer's official seal.

**Section 7. Approval of Guaranty Agreement.** The form of the Guaranty Agreement dated as of December 1, 2012, to be executed and delivered by the Tenant, the Subtenant and the other Guarantors named therein, in favor of the Trustee and for the benefit of the holder of the Bonds, in substantially the form presented for review prior to final passage of this Ordinance, is hereby approved.

**Section 8. Approval of Sublease.** The form of sublease dated as of December 1, 2012, pursuant to which the Tenant shall lease the Project to the Subtenant is hereby approved.

**Section 9. Pledge of the Project and Net Revenues.** The Issuer hereby pledges the Project and the net revenues generated under the Lease to the payment of the Bonds in accordance with K.S.A. 12-1744. The lien created by such pledge shall be discharged when all of the Bonds shall be deemed to have been paid within the meaning of the Indenture.

**Section 10. Election Under Section 144(a)(4) of the Internal Revenue Code.** The Issuer hereby elects that Section 144(a)(4) of the Internal Revenue Code of 1986, as amended, relating to the \$10,000,000 limit for qualified small issue bonds, to apply to the 2012 Bonds, and the Mayor or City Clerk is hereby authorized and directed to take such other action as may be necessary to make effective the election.

**Section 11. Further Authority.** The officers, agents and employees of the Issuer are hereby authorized and directed to take such action and execute such other documents, certificates and instruments as may be necessary or desirable to carry out the provisions of this Ordinance and to carry out and perform the duties of the Issuer with respect to the Bonds and the Bond Documents as necessary to give effect to the transactions contemplated in this Ordinance and in the Bond Documents.

**Section 12. Effective Date.** This Ordinance shall take effect from and after its final passage by the Governing Body of the Issuer, signature by the Mayor and publication once in the official newspaper of the Issuer.

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**PASSED** by the Governing Body of the City of Wichita, Kansas, and approved by the Mayor on November 20, 2012.

CITY OF WICHITA, KANSAS

(Seal)

By:

Carl Brewer, Mayor

Attest:

By: \_\_\_\_\_  
Karen Sublett, City Clerk

Approved as to form:

By: \_\_\_\_\_  
Gary E. Rebenstorf, City Attorney